

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michael Trepanier,

vs.

John Audette,

Complainant,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

To: Michael Trepanier, 10007 Northwood Lane, Brooklyn Park, MN 55443, and
John Audette, 9231 Queens Garden, Brooklyn Park, MN 55443.

On October 28, 2004, Michael Trepanier filed a Complaint with the Office of Administrative Hearings alleging multiple violations of Minn. Stat. § 211B.06 in a piece of campaign material distributed by John Audette in support of Rand Haglund, Trepanier's opponent in the Brooklyn Park City Council election. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that portions of the Complaint set forth a prima facie violation of § 211B.06, subd. 1. In particular, the Complaint alleges that the mailing falsely states that Trepanier previously resigned from the City Council because of a state auditor's investigation that occurred while he was a member of the Council.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before the undersigned Administrative Law Judge at 3:00 p.m. on November 1, 2004. If the parties would prefer to conduct the hearing by telephone, they should promptly advise the Administrative Law Judge of the telephone numbers where they can be reached at that time. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: October 29, 2004

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

Michael Trepanier is running for a seat on the Brooklyn Park City Council. He previously had been elected three times to the Brooklyn Park City Council but resigned a few months into his third term. After Trepanier's resignation, Rand Haglund won a special election to fill that seat on the Council. Haglund is running for re-election, and Trepanier is now opposing him.

Trepanier has filed a complaint concerning a piece of campaign literature written by John Audette, a friend of and supporter of Haglund's. It concerns Trepanier's actions during his tenure on the council and the circumstances of his resignation. The piece consists of two pages. The first contains a headline stating "What Brooklyn Park Voters need to remember about Mike Trepanier." Placed below it is a collection of what appear to be headlines clipped from newspapers, in different fonts, colors, and sizes, which provide as follows:

"State Auditors Investigation: Brooklyn Park, MN – Three incumbents do not seek reelection; Mike Trepanier resigns from City Council."

"Trepanier Quits City Council; Gets Cush Job at City Golf Course"

"Trepanier Resignation Costs Brooklyn Park Thousands"

“Trepanier Votes for Maximum Tax Levy; Results in Double Digit Increase”

“Trepanier Delivers Sixth Straight Tax Increase on Brooklyn Park”

On the second page, the piece contains three paragraphs of text that address these same topics in more detail. The mailing also advocates on behalf of Rand Haglund.

The relevant section of the Fair Campaign Practices Act provides as follows:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.¹

Trepanier has the following specific complaints:

1. With regard to the “headline” on the first page, which states that “**State Auditors Investigation: Brooklyn Park, MN** – Three incumbents do not seek reelection; Mike Trepanier resigns from City Council,” Trepanier contends that the three individual statements are true but that they are unrelated to each other and that assembling them in the fake headline to suggest that they are related and were reported as being related is grossly misleading and intended to damage his reputation and standing in the community. In the text on the second page, the mailing provides that

Under Mike Trepanier’s watch, the City budget exploded and spending was so out of control that the State Auditor investigated the City’s spending with an extensive audit. The results were devastating. Things were so bad that the sitting Mayor and two other council members did not seek reelection and Trepanier quit just 3 months after being elected to his 3rd term.

It is true that (1) state auditors did investigate, (2) three incumbents did not seek re-election, and (3) Trepanier did resign, but Trepanier maintains that his resignation had nothing to do with the audit. Whether Trepanier’s resignation was related to the auditor’s investigation is something that can be proved either true or false. The Administrative Law Judge finds that with regard to these statements the complaint alleges a prima facie violation of § 211B.06, subd. 1.

¹ Minn. Stat. § 211B.06, subd. 1.

2. With regard to the statement “Trepanier Quits City Council; Gets Cush Job at City Golf Course,” Trepanier argues that the author implies that he received special treatment. He did obtain employment, along with a number of other retirees, at the city golf course for pay of approximately \$7 per hour. The characterization that this is a “cush” job may or may not be accurate, but the phrase does not amount to a statement that can be proved either true or false. The Administrative Law Judge concludes that with regard to these statements, the complaint does not allege a prima facie violation of § 211B.06, subd. 1.

3. With regard to the statement that “Trepanier Votes for Maximum Tax Levy; Results in Double Digit Increase,” Trepanier contends that none of the five budgets he voted on had a double digit increase in either the levy rate or in actual tax revenue. He has provided data, which are taken from the city’s certified annual financial reports, providing that there was no percentage tax increase in those years higher than 7.2%. The Administrative Law Judge concludes that with regard to these statements, the complaint alleges a prima facie violation of § 211B.06, subd. 1.

4. With regard to the statement in the text that “[h]e wants you to forget that he raised taxes on you every year he was in office,” Trepanier maintains it is not true. He has provided data showing that the levy rates declined from 1996-97 and from 1999-2000. With regard to these statements, there is a prima facie violation.

5. With regard to the statement in the text that “[h]e wants you to forget that while he was in office, Brooklyn Park became the 2nd highest taxed city in the state and crime was out of control!” Trepanier contends that Brooklyn Park has never been the second highest taxed city in the state, although he agrees it was ranked second in the metropolitan area if all property taxes are included. The statement made is capable of being proved true or false, and with regard to whether Brooklyn Park is the second-highest taxed city in the state, there is a prima facie violation. The statement that “crime was out of control” is one of opinion and is not actionable under § 211B.06, subd. 1.

6. With regard to the statement in the text that “Despite the millions and millions of dollars in tax increases, Trepanier did nothing to ensure that our money was being spent wisely,” Trepanier contends that the statement is not accurate because he participated in budget reviews, asked questions and actively sought ways to reduce expenditures. This statement is essentially one of opinion and cannot be proved either true or false. It is not actionable under § 211B.06, subd. 1.

7. With regard to the remaining allegations made by Trepanier, he concedes that although he dislikes the wording, the gist of the statement is either true or essentially true. The statements cannot be proved false and are not actionable under the statute.

K.D.S.